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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THOMAS CLINTON,

Plaintiff and Appellant,

v.

SUPERIOR COURT OF LOS ANGELES
COUNTY et al.,

Defendants and Respondents.

B211401

(Los Angeles County
Super. Ct. No. SC096767)

APPEAL from a judgment of the Superior Court of Los Angeles County.
David T. McEachen, Judge. Affirmed.

Thomas Clinton, in pro. per., for Plaintiff and Appellant.

Cummings, McClorey, Davis, Acho & Associates, Sarah L. Overton for
Defendants and Respondents.

Plaintiff Thomas Clinton appeals following the successful demurrer to his complaint seeking monetary damages for the allegedly improper calculation of his prison custody credits. The trial court sustained without leave to amend the demurrer by defendants, the Superior Court of the County of Los Angeles (Superior Court) and court clerk Kay Raphael, on the grounds of judicial and quasi-judicial immunity. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

As alleged in Clinton's complaint, while he was on probation he was arrested and charged with three felonies, two counts of the sale or transportation of a controlled substance and one count of the possession of a controlled substance for sale. He pled guilty, and on August 22, 2003, was sentenced by Judge Richard Stone to a total prison term of nine years eight months. Clinton received sentencing credits totaling 1,890 days. In June of 2005, Judge Stone denied Clinton's petition for writ of habeas corpus in which he alleged that his sentencing credits were improperly calculated. Clinton did not appeal Judge Stone's ruling, nor did he appeal his sentencing.

According to Clinton, during the time he was in prison he was mistreated by prison personnel and the other inmates. He believes that the Superior Court is ultimately responsible because he was not given credit for all the time he served prior to sentencing.

On June 30, 2006, the Superior Court prepared a nunc pro tunc order and filed an amended abstract of judgment, reflecting sentencing credits totaling 4,086 days, which amounted to an additional 2,196 days of credits. Clinton received additional sentencing credits because, as indicated in the court's nunc pro tunc order amending the abstract of judgment, it appeared "to the court that through inadvertence and clerical error the minute order of 8-22-03, does not properly reflect the court's order [and the] minute order is amended nunc pro tunc" to add the additional custody credit and good time/work time.

Soon thereafter, Clinton was released from prison. Thus, of the nine-year eight-month prison sentence, Clinton served less than three years, plus the time served prior to sentencing. He complains that he spent too much time in prison and should have been released earlier.

In September of 2006, Clinton went to the Superior Court to discuss the nunc pro tunc order with the court supervisor. He claims that she told him that Judge Stone had made an error in calculating the number of days for which he should receive credit. In view of the error, Clinton requested that Judge Stone expedite his request with the prison board to serve his parole in Arkansas. Judge Stone, however, would not intercede.

On January 14, 2008, Clinton filed the complaint in the present case against the Superior Court (which he erroneously named the Beverly Hills Superior Court) and court clerk Raphael. Clinton alleged personal injury and false imprisonment because he was detained in prison longer than he should have been, due to the failure to calculate properly the correct amount of sentencing credits. He asserted that Judge Stone erred in calculating his time served and his good time credits when determining his sentence in a criminal case, and that Raphael erred in entering the defective order into the minutes. Clinton also alleged that in September of 2007 he served government claims on the Board of Supervisors for the County of Los Angeles. He did not assert, however, that he had served any claim on the Executive Officer for the Superior Court.

Defendants demurred to the complaint on the grounds that (1) it was barred by judicial and quasi-judicial immunity, (2) Clinton failed to comply with the government claims statute, and (3) the complaint was barred by the statute of limitations. Clinton did not file an opposition to the demurrer or file an amended complaint. Rather, Clinton filed several other pleadings addressing, for example, the supposed potential for spoliation of evidence and requesting that the court swear by declaration and under the penalty of perjury that all the allegations in Clinton's complaint were true.

The trial court sustained the demurrer without leave to amend as to both defendants, on the grounds of judicial immunity for the Superior Court and quasi-judicial immunity for the court clerk.

This appeal ensued.

DISCUSSION

Judicial and quasi-judicial immunity

Reviewing the matter in accordance with the customary standard of appellate review (see *Gallivan v. AT&T Corp.* (2004) 124 Cal.App.4th 1377, 1381), we find that the trial court properly sustained defendants' demurrer without leave to amend on the grounds of judicial and quasi-judicial immunity.

The concept of judicial civil immunity is “‘deeply rooted in California law.’” (*Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 852.) “The decisions of this state uniformly and consistently grant immunity from civil suit to judges in the exercise of their judicial functions. [Citation.] That is true even if the acts are in excess of the jurisdiction of the judge and are alleged to have been done maliciously and corruptly. [Citation.]” (*Tagliavia v. County of Los Angeles* (1980) 112 Cal.App.3d 759, 761.)

In the present case, the basis for Clinton's lawsuit is his claim that Judge Stone erred during sentencing when calculating his custody and good time credits. Apparently, Clinton sued the Superior Court because it is Judge Stone's employer. However, “a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.” (Gov. Code, § 815.2, subd. (b).) And, the term “employee” specifically includes a “judicial officer.” (Gov. Code, § 810.2.) Thus, because Judge Stone is immune from liability, the Superior Court is also immune from liability under section 815.2, subdivision (b).

Moreover, “Under the concept of ‘quasi-judicial immunity,’ California courts have extended absolute judicial immunity to persons other than judges if those persons act in a judicial or quasi-judicial capacity.” (*Howard v. Drapkin, supra*, 222 Cal.App.3d at pp. 852-853.) Such absolute quasi-judicial immunity has been held to apply to arbitrators, grand jurors, prosecutors, and State Bar officials (*id.* at p. 853), as well as to court clerks and other nonjudicial officers engaged in purely administrative acts that are part of the judicial function. (*In re Castillo* (9th Cir. 2002) 297 F.3d 940, 952.)

Here, Clinton complains that court clerk Raphael entered the erroneous judgment given to her by Judge Stone. However, Raphael is considered an employee of the trial

court where she works (Gov. Code, § 811.9, subd. (a)), and is immune from civil liability under the doctrine of quasi-judicial immunity regarding her official duty of entering the judgment of the court.

Accordingly, the trial court properly sustained the demurrer without leave to amend on the grounds of judicial immunity and quasi-judicial immunity.

Other grounds for sustaining the demurrer

In view of the above resolution of the immunity issue, it is unnecessary to address defendants' other defenses asserted in support of sustaining the demurrer. We thus need not discuss Clinton's failure to file with the proper entity a timely written claim for damages within six months after the accrual of the personal injury causes of action. (Gov. Code, § 945.4; see also §§ 811.9, subd. (a), 911.2, 915, subd. (c)(1), 945.4 & 950.2.) Nor need we address defendants' defense of the bar of the two-year statute of limitations for personal injury claims (Code Civ. Proc., § 335.1) and the bar of the one-year statute of limitations for false imprisonment claims (Code Civ. Proc., § 340, subd. (c)).

Clinton's claim of bias

Clinton also complains on appeal about the impatience and bias of the trial judge (Judge David McEachen) in dealing with pro se litigants. Clinton asserts that the judge failed to answer motions, did not permit him an opportunity to present his argument to defendants' opposition, and during a telephonic appearance allegedly spoke "coldly" to him when saying "Good day Mr. Clinton." However, Clinton specifically stated in a response filed in the Superior Court that he "does not contest [] Judge McEachen presiding over this case." Clinton never filed a challenge pursuant to Code of Civil Procedure section 170.1, and never claimed the judge was biased or that he could not get a fair and impartial hearing. (See Code Civ. Proc., § 170.3.) If he had grounds for disqualifying the judge, he was required to have raised those grounds at the earliest possible opportunity. (Code Civ. Proc., §§ 170.3, subd. (c)(1), 170.4, subd. (b).)

Because no issue of bias or judicial disqualification was raised in the trial court, the matter is "considered waived and will not be considered by the reviewing court."

(*Johnson v. Hapke* (1960) 183 Cal.App.2d 255, 261.) Also, Clinton fails to cite a specific page in the clerk's transcript to support his claim of bias (see *Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282-283), and he has not provided any reporter's transcript (see *Oldenkott v. American Electric, Inc.* (1971) 14 Cal.App.3d 198, 207). Error is never presumed, and Clinton has failed to meet his burden of showing reversible error by an adequate record. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575.) Nor does Clinton's election to act as his own attorney on appeal entitle him to any leniency as to the rules of practice and procedure; otherwise, ignorance would be unjustly rewarded. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.)

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.